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**October 31, 2008**

H. Scott Caven, Jr., Chairman  
Office of the Board of Regents  
Ashbel Smith Hall, Suite 820  
201 West 7th Street  
Austin, Texas 78701

Kenneth I. Shine, M.D.  
Interim Chancellor, The University of Texas System  
Executive Vice Chancellor for Health Affairs  
601 Colorado Street, 4th Floor  
Austin, Texas 78701

Larry R. Kaiser, M.D., President  
The University of Texas Health Science Center at Houston  
7000 Fannin, Suite 1200  
Houston, Texas 77030

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ARTICLE NO.S: 7001 1940  
0005 XXXX XXXX & RESPECTIVELY**

**Re: Expulsion of 4<sup>th</sup> year medical student, Lieutenant Darin Duncan, MBA**

Dear Chairman Caven, Chancellor Shine, M.D., and President Kaiser, M.D.,

This letter is written in reference to 1<sup>st</sup> Lieutenant Darin Duncan, a Rice MBA graduate, UT master's graduate in accounting and a CPA, who, until recently, had been attending the University of Texas medical school in Houston as a fourth year medical student. While Lt. Duncan was diagnosed on October 9, 2008, with major depression this letter first addresses Lt. Duncan personally and professionally, the retaliatory disciplinary actions taken against Lt. Duncan due to his speech, and then the impact of his recent diagnosis, which in retrospect, he was suffering with for some time. A review of the medical school's policies on academic performance and Lt. Duncan's grades clearly points to Lt. Duncan's expulsion, even though unsupported, being due to alleged misconduct.

Darin saved a life. While Darin was performing his Internal Medicine Ward service rotation Professor Ikenna Ogbaa, M.D., credited Darin's attentiveness and ability to provide an on-the-spot complete medical history to alert the hospital staff to a patient in a critical arrhythmia due to a large bilateral pulmonary emboli. **Exhibit 1.** Outstanding.

Darin is a dedicated, capable medical officer in our military providing medical services to our military's most valuable human resources including the Rangers, Special Forces, and aviation and airborne personnel. Colonel Charles Killingsworth, M.D., a director at the Michael E. DeBakey VA Medical Center, gushes with praise for Darin's medical services to our country. **Exhibit 2.** Exemplary.

Other equally laudatory declarations of the highly respected and credentialed are available upon request.

Darin's alleged official expulsion stems from a "Marginal Performance" in Cardiology which according to the Student Catalog is not grounds for a referral for discipline let alone expulsion. The Catalog clearly dictates that it takes a *complete class failure twice in one Semester* to even activate any academic scrutiny and then probation comes first--the medical school alleges no such probation or that Darin failed even one class in his last semester. **Exhibit 3, Academic Probation and Dismissal, 2007-2009 Catalog, page 44-45.**

Darin's expulsion stems from his past truthful speech in "Learning to Survive Being a Doctor" published in Medscape, an internet medical student publication, concerning his revealing experience in the emergency room and in the hospital. **Exhibit 4.** A complete reading of this publication shows nothing contained therein that is not protected Free Speech under the United States' Constitution or the Texas constitution. Whether the punishment for Darin's speech is immediate or delayed, as here, or coupled with other alleged misconduct makes no difference when analyzing whether rights were violated.

Furthermore, Darin's speech clearly fits the criteria, even if a somewhat vague criteria, that students approach their education with "honesty and integrity." **Exhibit 3, Conduct and Discipline, 2007-2009 Catalog, page 45.** A reading of the rules and regulations regarding student conduct and discipline as set forth in the Rules and Regulations of The University of Texas System Board of Regents Series 50101, likewise, reveals that Darin should still be enrolled in medical school.

#### Recent diagnosis of Major Depression

Darin was diagnosed October 9, 2008, with Major Depression. Darin immediately began the doctor's recommended course of treatment and such treatment is, by all accounts, working. Earlier the medical school had sent Darin to Dr. David Axelrad to assess Darin's psychology who, for reasons unknown, failed to diagnose Darin's obvious condition. As most, if not all, of Darin's alleged transgressions leading to expulsion can be explained as stemming from his condition sending Darin to the medical school's choice was probably not the best of possible actions to evaluate Darin's condition. Dr. Axelrad's patient mental health questionnaire, for instance, asked only about the instant, at that moment, state of mental health and not for any historical information.

Surely, a medical school should be sensitive to any manifestations of a student's Major Depression and seek reasonable accommodations. Most importantly whether Darin's condition is organic or stems from other non-medical school related

circumstances--such as marital problems--was never explored.

In total Darin is a prime candidate for an MD degree and should be allowed to finish his studies and go on with his career.

Darin does not wish to become adversarial and only sought this firm's advice and counsel due to my experience with many school disciplinary matters. I have attached the Houston Chronicle's references to my cases and also attached an article concerning one of my earlier cases involving UTMB medical school. **Exhibits 5 & 6.**

Please give this letter your utmost consideration and feel free to contact Darin directly about this matter.

SINCERELY YOURS,

RANDALL L. KALLINEN

encl./attachment(s): see exhibits referenced above

RLK/ms

cc: Dean Giuseppe N. Colasurdo, M.D. (via FIRST CLASS US MAIL)  
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